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The basic principles of the Hungarian labour law

1. Brief Introduction

The previous Hungarian Labour Code (1992) has witnessed some significant changes in the last two decades. Since the end of the communist regime, labour law legislation has had to cope with the challenges of the new social and economic system. As a result, and due to the development of the labour market, labour law plays an increasingly significant role.

Employment relations in Hungary are governed by the Labour Code and other complementary labour law legislations,¹ collective bargaining agreements (works agreement²) and individual employment contracts. In the context of labour disputes, courts generally protect employees' rights by interpreting the provisions of the Labour Code, the relatively limited number of collective bargaining agreements and the majority of fairly concluded employment contracts intend to protect the legal and economic interest of employees. The general opinion is that administrative and labour courts are usually considered very "employee friendly" in Hungary. Overall, the litigation-trends reflect a decrease in the number of lawsuits initiated by blue-collar employees, while more and more white-collar employees, particularly executives and key-employees, are initiating labour disputes against their employers before courts in Hungary.

Owing to the severe impact of the recent economic crisis on the Hungarian economy, increasing employment has been at the very heart of the Hungarian government's economic policy. The government has also declared the need to increase the level of flexibility in employment contracts to enable the Hungarian economy to respond more effectively to the changing economic climate. To this end, the government launched a complete overhaul of current labour legislation, the result of which was the introduction of a new Hungarian Labour Code (hereinafter: HLC).³

The HLC was passed by the Hungarian government in December 2011. The code partially came into force in July 2012, taking full effect on 1 January

¹ For example: law on strike, occupational health and safety, labour inspection, and legislations which affect labour relations, such as equal treatment act, data protection act, etc.

² The new Code introduced a new form of "collective contract", called the "works agreement", which can be concluded between an employer and a works council in circumstances prescribed by the Code.

³ http://knowledge.leglobal.org/wp-content/uploads/LEGlobal_Memo_Hungary.pdf (17 07-2015)

2013 after a six-month transition period. It completely replaced the previous Labour Code (1992), which was introduced immediately after the democratic transition from state socialism. The expectation of the ruling government is that the new Labour Code will make employment more flexible, cheaper and more market-compliant.

It must be underlined that several new legal principles have appeared in the new Labour Code, some of which are entirely new. However, the majority has been developed by judicial practice in the past and has only now been turned into written law by the Code.

As a new development and in accordance with the basic aim of the legislators, the new Labour Code and previous Civil Code had a genuine link. After several years of preparation, the new Civil Code of Hungary became effective in 2014, making the amendment of the Labour Code necessary. As a result of changes in the Labour Code, civil law elements became more important in employment law. As a consequence, the general rules of the HLC are now in compliance with the Civil Code.

This article intends to summarise the main principles of the Hungarian labour law, including the Fundamental Law (Constitution) and the HLC with some reference to the new Civil Code.

2. Fundamental principles of Hungarian labour law

Before dealing with the system regulating labour law and with its detailed rules, it is necessary to refer in brief to the principles underlying the law. First, the relevant constitutional principles are being dealt with. Subsequently, some general legal principles which govern the whole of labour law will be discussed.⁴

2.1. Basic Principles of the Fundamental Law (Constitution)

The Fundamental Law of Hungary (in Hungarian: Magyarország Alaptörvénye), the country's constitution, was adopted on 18 April 2011, promulgated a week later and went into force on 1 January 2012. Hungary's first constitution to be adopted within a democratic framework and following free elections, it succeeded the 1949 Constitution, adopted on 20 August 1949 and heavily amended on 23 October 1989. That document was Hungary's first permanent

⁴ FERENCZ JÁCINT – CÖNDÖR ÉVA – AYULAVÁRI TAMÁS – MÁRTYÁS GÁBOR, *Munkajogi alapismeretek*, Budapest: ELTE Kiadó, 2013. pp. 35.

written constitution, and until its replacement, the country was the only former Eastern Bloc nation that did not adopt an entirely new constitution after the fall of Communism.

The Fundamental Law has restructured the location of fundamental freedoms and slightly diminished the employment related fundamental rights. There is a chapter in the Fundamental Law on fundamental rights related to work. It is also mentioned in the National Avowal of the Fundamental Law that the power of the community and the honour of human beings are based upon work, the product of human intellect. It is mentioned among the general principles that the economy of Hungary is based upon value-producing work and the freedom of enterprise. The role of the State to take measures for the opening of employment options is then stipulated as an objective of the State in the chapter on fundamental freedoms. The State should present the opportunity to everyone to work. The Fundamental Law also affirms that every person must be obliged to contribute to the community's enrichment with his/her work to the best of his/her abilities and potential.⁵ A value content is thus attached to the possibility of physical and intellectual work and enterprise in the Fundamental Law.

In contrast to the previous Constitution, the Fundamental Law sets out an objective regarding the provision of humane habitat and access to public services.⁶ It must also be noted that the Fundamental Law's chapter on fundamental rights also relies on the European Charter of Human Rights.⁷

The labour law related basic rights in the Fundamental Law are as follows:

1. Freedom of association and organisation
2. The right to free choice of employment
3. Non-discrimination
4. Social rights.⁸

2.1.1. Freedom of association and organisation

Paras 2–5 of Article VIII practically rearrange and unify the rules that have been set out in various provisions of the former Constitution regarding the freedom of association and organisation. The Fundamental Law names two sub-

⁵ See Article XII of the Fundamental Law.

⁶ See Article XXII of the Fundamental Law.

⁷ <http://www.eui.eu/Documents/General/DebatingtheHungarianConstitution/TheBasicLawofHungary.pdf> (10.11.2014)

⁸ HALMAI, GÁBOR – BÓTH GÁBOR ATTILA, *Emberi jogok*, Budapest: Osiris Kiadó, 2008. pp. 837-847.

rights of the freedom of assembly, 1) to establish and 2) to join organisations.⁹ Contrary to the former regulation, it does not mention the objectives of the organisation.¹⁰

The rule of the Fundamental Law on the free establishment and operation of the parties poses the unconditional requirement that state organs must not hamper the establishment and operation of the parties functioning according to constitutional standards. The right to establish and operate a party is behoved for all and for all parties, and the ground therefore is the Constitution itself.¹¹

It must also be noted that this clause also covers the contents of Article 12 of the Charter of Fundamental Rights of the European Union¹² and Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe.¹³ This regulation also fits in the terminology and regulatory models used in European constitutions.

2.1.2. The right to free choice of employment

Para 1 of Article XII of the Fundamental Law – besides breaking from a clause of the Constitution that was a remnant from the era of state socialism, the strict understanding of the right to work, which can only be enforced among full employment conditions – practically implements Article 70/B of the Constitution.¹⁴ This means no real modification, because the persistent practice of the Constitutional Court identified the right to work as the freedom of choice of profession and employment.¹⁵

The second phrase of Para 1 of Article XII of the Fundamental Law formulates the right to establish enterprise as a fundamental right. It sets out that the right to enterprise is an aspect of the free choice of employment, which means that there is no hierarchical relation among the right to work, freedom of choice of employment and the freedom of enterprise. Consequently they are not different from each other as fundamental rights.¹⁶

⁹ These rights are essential for implementing collective labour law.

¹⁰ <http://www.kormany.hu/download/0/d9/30000/Alapt%C3%B6rv%C3%A9ny.pdf> (05.04.2015)

¹¹ Decision 2179/B/1991 CC.

¹² "Everyone has the right [...] to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests."

¹³ "Everyone has the right [...] to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."

¹⁴ TRÓCSÁNYI LÁSZLÓ (ed.), *A mi alkotmányunk*, Budapest: Osiris Kiadó, 2006. pp. 461.464.

¹⁵ Decision 21/1994 CC.

¹⁶ Decision 21/1994 CC.

The second sentence of Para 1 of Article XII is completely novel. "Every person shall have the obligation to contribute to the enrichment of the community through his or her work, in accordance with his or her abilities and possibilities." It can refer to an obligation to work for the benefit of the community according to one's abilities and potential, but also to the general and proportionate sharing in taxation in connection with work. However, it definitely cannot refer to any coerced work, as that would be contrary to international instruments binding to Hungary.

Para 2 reflects the social side of the right to work according to the practice of the Constitutional Court, which pointed out that there must be a distinction made between the fundamental right to work and the social right to work, particularly the institutional side thereof, the obligation of the State to present employment policy and to create jobs, etc.¹⁷

2.1.3. Non-discrimination

Equality before the law, legal capacity, the prohibition of discrimination and tasks related to equal opportunities are all regulated in the same part of the Fundamental Law.¹⁸ Equality before the law, legal capacity borne by all, and the prohibition of discrimination are different aspects of the same equality principle; these could also be derived from the human dignity provisions.¹⁹

The Fundamental Law follows the tradition set out by the Constitution (which is an unusual solution in constitutions) and grants every person legal capacity in Hungary, according to the text of Article 6 of the Universal Declaration of Human Rights and Article 16 of the Covenant on Civil and Political Rights.

2.1.4. Social rights

As mentioned in the introduction, one of the cornerstones of the chapter on freedoms is the regulation on social rights. The former Constitution (textually) considered social security as a fundamental right and it defined as rights the allowances required for living in the case of old age, illness, disablement, widowhood, orphanage and unemployment through no fault of one's own.

¹⁷ Decision 21/1994 CC.

¹⁸ LEHOCZKYNÉ KOLLONAY, CSILLA, 'Kezdeti lépések a foglalkoztatási diszkrimináció bírósági gyakorlatában' *Fundamentum*, Vol 2 No 4, p. 94, 1998.

¹⁹ TRÓCSÁNYI LÁSZLÓ, 'Magyarország alaptörvényének létrejötte és az alaptörvény vitatott rendelkezései' *Kommentár Vol 6 No 4*, 2011. http://kommentar.info.hu/iras/2011_4/magyarorszag_alaptorvenyenek_letrejotte_es_az_alaptorveny_vitatott_rendelkezesei (07.11.2012)

Social security is defined as a state objective in the Fundamental Law: Hungary shall strive to provide social security to all of its citizens and allowances for the aforementioned situations are defined as statutory subsidies.²⁰²¹

2.2. General legal principles of the new Labour Code

Following the brief outline of the basic principles embedded in Fundamental Law, it is also necessary to consider certain general legal principles which affect labour law. These principles are strongly related to the provisions of the new Civil Code. A system of guarantees based on the basic principles permeates the whole of the regulation which protects both the employer and the employee, such as the principles of mutual cooperation, good faith and fairness, the obligation of the parties to provide information on a mutual basis, the right to representation of interest and self-organisation, the ban on discrimination, the protection of the weaker party, positive discrimination based on social grounds, the requirement of proper legal practice etc. If legal assurances are violated, the injured party has the right to seek remedy at a court of law.²²

Several new legal principles have appeared in the HLC, some of which are entirely new. However, the majority has been developed by judicial practice in the past and has only now been turned into written law by the Labour Code. For example, the Code has general rules governing when declarations have legal effect in employment. These are significant, particularly when determining the legal status of employers' policies which have been issued unilaterally.

Moreover, the entering into force of the HLC changes the basic approach to labour law: as compared to the earlier regulation, individual and collective agreements are given a much broader scope, thereby shifting the parties' relationship towards juxtaposition in addition the general requirements of conduct are also formed according to the rules of civil law. In this way employment risks are for the most part placed from the employer onto the employee, which is highly debated by trade unions and some labour law experts.²³

Above the basic principles of the Hungarian Fundamental Law which determine the content of labour law are outlined. Furthermore, according

²⁰ See Article XIX of the Fundamental Law.

²¹ HALMAI, GÁBOR – BÓTH GÁBOR ATTILA, *Emberi jogok*, Budapest: Osiris Kiadó, 2008. pp. 837-847.

²² PÁL LAJOS – ŐRINCZ GYÖRGY – ÖÖZMA ANNA – NETHŐ RÓBERT, *Az új Munka Törvénykönyvének magyarázata*, Budapest: HVG-Orac, 2012. pp. 25-32.

²³ HAJDÚ JÓZSEF – ZUN ATTILA (eds.), *Munkajog I.*, Budapest: Patrocinium, 2012. p. 79.

to Chapter I of the new HLC, the principles of labour law can be divided into two groups: A. general principles (compliance principle) and B. behavioural principles.

A. The general (compliance) principles of Hungarian labour law are as follows:

- a) conformity with EU law,
- b) limitation of the interpretation of agreements.

B. The behavioural principles of the HLC are as follows:

- a) principle of expected conduct,
- b) principle of equitable assessment,
- c) obligation to provide information on a mutual basis,
- d) proper exercise of rights,
- e) protection of the legitimate economic interests of the employer,
- f) requirement of maintaining confidentiality,
- g) protection of personal rights,
- h) restriction of the employer's right of control, and
- i) the equal treatment.

2.2.1. General (compliance) principles of the HLC

The general provisions of the HLC are of decisive importance in respect of the application of law because these rules include the fundamental principles which determine labour law and the general provisions which are applied universally to all (most) of the legal institutions which are incorporated in the other parts of the HLC.

a) Conformity with EU law. Pursuant to the basic interpretation principle of the HLC, the provisions of the Labour Code shall be interpreted in accordance with the legislation of Hungary and the European Union. The practical importance of the fundamental principle lies mainly in the fact that in the course of the application of law the labour law directives of the European Union can be referred (regardless of whether the Hungarian legislators provided for the given question in accordance with the requirements of the directive).

b) The second general principle is that agreements which waive or restrict the rights of a person (employee) cannot be broadly construed [Subsections (1)-(2) of Section 5 of the HLC].²⁴

²⁴ JÁ CZKU, TAMÁS: *Alapelvek, új irányok az Mt-ben* kih.gov.hu/documents (Loaded 24.04.2015)



2.2.2. The behavioural principles of the HLC

a) Conduct expected during the execution of employment relationship. Employment contracts shall be executed as it might normally be expected in the given circumstances, unless any legal provision exists to the contrary. In exercising rights and discharging obligations, the parties involved must act in the manner consistent with the principle of good faith and fairness, they shall be required to cooperate with one another, and they shall not engage in any conduct to breach the rights or legitimate interests of the other party. [Subsections (1)-(2) of Section 6 of the HLC]. New general conduct rules, replacing the introductory provisions of the former Labour Code, will play an important part in the legal interpretation of the new HLC in the future. They set down more comprehensively the general behaviour expected from each party and the requirement to act with due diligence, as well as with fair and reasonable consideration of the employee in particular cases, are both new. They also encompass employees' behaviour outside working hours and more precisely define the possible interpretation of confidentiality obligations.²⁵

b) *Principle of equitable assessment.* Employers shall take into account the interests of workers under the principle of equitable assessment, where the mode of performance is defined by unilateral act, it shall be done so as not to cause unreasonable disadvantage to the worker affected [Subsection (3) of Section 6 of the HLC].

c) *Obligation to provide information on a mutual basis.* The parties falling within the scope of the Labour Code must inform each other concerning all facts, information and circumstances, and any changes therein, which are considered essential from the point of view of employment relationships and exercising rights and discharging obligations as defined in this Act [Subsection (4) of Section 6 of the HLC].²⁷

d) *Requirement of proper exercise of rights.* Wrongful exercise of rights is prohibited. For the purposes of the HLC 'wrongful exercise of rights' means, in particular, any act that is intended for or leads to the injury of the legitimate interests of others, restrictions on the enforcement of their interests, harassment, or the suppression of their opinion. [Section 7 of the HLC].

e) *Protection of the legitimate economic interests of the employer.* During the life of the employment relationship, workers shall not engage in any conduct by

²⁵ FERENCZ JÁCINT – CÖNDÖR ÉVA – AYULAVÁRI TAMÁS – MÁRTYÁS GÁBOR, *Munkajogi alapismeretek*, Budapest: ELTE Kiadó, 2013. p. 35.

²⁶ PÁL LAJOS – JÓRINCZ GYÖRGY – ÖOZMA ANNA – NETHŐ RÓBERT 2012, p.29.

²⁷ HAJDÚ JÓZSEF – ZUN ATTILA (eds.), *Munkajog I.*, Budapest: Patrocinium, 2012. p. 83.

which to jeopardize the legitimate economic interests of the employer, unless so authorized by the relevant legislation. Workers may not engage in any conduct during or outside their paid working hours that – stemming from the worker's job or position in the employer's hierarchy – directly and factually has the potential to damage the employer's reputation, legitimate economic interest or the intended purpose of the employment relationship. Workers may not exercise the right to express their opinion in a way where it may lead to causing serious harm or damage to the employer's reputation or legitimate economic and organizational interests [Subsections (1)-(3) of Section 8 of the HLC].²⁸

f) *Requirement of maintaining confidentiality.* Workers shall maintain confidentiality in relation to business secrets obtained in the course of their work. Moreover, workers shall not disclose to unauthorized persons any data learned in connection with their activities that, if revealed, would result in detrimental consequences for the employer or other persons. The requirement of confidentiality shall not apply to any information that is declared by specific other legislation to be treated as information of public interest or public information and as such is rendered subject to disclosure requirement [Subsection (4) of Section 8 of the HLC].

g) *Protection of personal rights.*²⁹ The personal(ity) rights of parties falling within the scope of the Civil Code and the Labour Code shall be respected. The personal(ity) right of workers may be restricted if deemed strictly necessary for reasons directly related to the intended purpose of the employment relationship and if proportionate for achieving its objective. The means and conditions for any restriction of personal(ity) rights, and the expected duration shall be communicated to the workers affected in advance. On general principle, workers may not waive their personal(ity) rights in advance. Any legal statement concerned with the personal(ity) rights of a worker shall be formally valid if made in writing [Subsections (1)-(3) of Section 9 of the HLC].³⁰

A worker may be requested to make a statement or to disclose certain information only if it does not violate his/her personal(ity) rights, and if deemed necessary for the conclusion, fulfilment or termination of the employment relationship. An employee may be requested to take an aptitude test if one is prescribed by employment regulations, or if deemed necessary

²⁸ FERENCZJÁCINT – CÖNDÖR ÉVA – AYULAVÁRI TAMÁS – MÁRTYÁS GÁBOR, 2013. p. 38.

²⁹ NB.: The Second Book of the new Civil Code (2013) provides for the rules on rights relating to personality, and uses the term 'personality rights' instead of 'personal rights', therefore Section 9 of Subtitle 5 of the Labour Code is modified. (Subtitle 5 of the Labour Code: "Protection of personal rights" is modified to "5. Protection of personality rights".)

³⁰ ARANY TÓTH MARIANN, A munkavállaló emberi méltóságának védelme a munkaviszonyban, http://www.mjsz.uni-miskolc.hu/201101/10_aranytothmariann.pdf

with a view to exercising rights and discharging obligations in accordance with employment regulations. Employers shall inform their workers concerning the processing of their personal data. Employers shall be permitted to disclose facts, data and opinions concerning a worker to third persons in the cases specified by law or upon the worker's consent.

An employee may only be requested to issue a declaration or to disclose data and may only be subjected to a test for the assessment of his/her skills which does not violate his/her personal rights and is relevant to the establishment, maintenance or termination of employment. An employee shall take an aptitude test if it does not violate his/her personal rights and which is based on rules relating to his/her employment.³¹

The monitoring of employees may only be extended to practices and activities related to their employment, and shall not violate the human dignity of the employee. The privacy of the employee may not be monitored. The employer shall inform its employees in advance of the use of any technical devices that serve to monitor the employees. In the event of the application of technical devices, the employer shall determine adequate rules of data protection and data security.³²

Information and data pertaining to workers may be used without their consent for statistical purposes and may be disclosed for statistical use in a manner that precludes identification of the workers to whom they pertain [Subsections (1)-(4) of Section 10 of the HLC].

h) *Restriction of the employer's right of control.* (protection of personal(ity) rights) Employers shall be allowed to monitor the behaviour of workers only to the extent pertaining to the employment relationship. The employers' actions of control, and the means and methods used, may not be at the expense of human dignity. The private life of workers may not be violated. Employers shall inform their workers in advance concerning the technical means used for the surveillance of workers [Subsections (1)-(2) of Section 11 of the HLC].³³

j) *Principle of equal treatment.* In connection with employment relationships, such as the remuneration of work, the principle of equal treatment must be strictly observed. Remedying the consequences of any breach of this requirement may not result in any violation of, or harm to, the rights of other workers. 'Wage' shall mean any remuneration provided directly or indirectly

³¹ http://www.szmdsz.hu/index_htm_files/tervezet_hatlyos_viszonya.pdf (Loaded: 03.04.2015)

³² <http://www.hrportal.hu/telkes/index.phtml?page=article&id=96277> (Loaded: 06.04.2015)

³³ LAKI MIHÁLY – HACSA BEÁTA – ÁEUMANN LÁSZLÓ, *Az új Munka Törvénykönyvének hatása a munkavállalók és a munkáltatók közötti kapcsolatokra*, Kutatási zárójelentés, Budapest: Magyar Tudományos Akadémia Közgazdaság- és Regionális Tudományi Kutatóközpont Közgazdaság-tudományi Intézet, 2013, <http://mek.oszk.hu/11400/11439/11439.pdf>

in cash or in kind, based on the employment relationship. The equal value of work for the purposes of the principle of equal treatment shall be determined based on the nature of the work performed, its quality and quantity, working conditions, the required vocational training, physical or intellectual efforts expended, experience, responsibilities and labour market conditions [Labour Code, Subsections (1)-(3) of Section 12].³⁴

3. Summary

As in many European states' labour legislation, in Hungary the fundamental guarantees of the parties of the employment relationship (including collective labour relationship as well) are based on the basic principles permeating the whole of the regulation which protects both the employer and the employee. The main guiding principles are the mutual cooperation, good faith and fairness, the obligation of the parties to provide information on a mutual basis, the right to representation of interest and self-organisation, the ban on discrimination, the protection of the weaker party, positive discrimination based on social grounds, the requirement of proper legal practice etc. Our intention was to give a brief overview of these basic and guiding principles.

³⁴ FERENCZ JÁCINT – CÖNDÖR ÉVA – AYULAVÁRI TAMÁS – MÁRTYÁS GÁBOR, 2013. pp. 42-43.